UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: SOCIAL MEDIA ADOLESCENT ADDICTION/PERSONAL INJURY PRODUCTS LIABILITY LITIGATION

THIS DOCUMENT RELATES TO:

4:23-cv-05448

MDL No. 3047

Cases Nos. 4:22-md-03047-YGR
4:23-cv-05448

STATE ATTORNEYS GENERAL'S RESPONSIVE LETTER BRIEF REGARDING META'S ANTICIPATED MOTION FOR SUMMARY JUDGMENT AND RULE 702 MOTIONS

Judge: Hon. Yvonne Gonzalez Rogers

Magistrate Judge: Hon. Peter H. Kang

Meta's anticipated motions will not advance this case: they turn factual issues into legal questions for the Court, ignore the evidentiary record, and recycle arguments the Court has already rejected. The Court should look past Meta's rhetoric and not further entertain these unsupported and redundant motions.

I. Meta's Motion for Summary Judgment

Deception Claims. Meta seeks summary judgment for a purported lack of evidence of falsity and intent related to particular statements. ECF 2466 at 1. Meta misunderstands the AGs' theory of liability and consumer protection law. The AGs have alleged (and have evidence of) a widespread scheme of deceptive conduct. This Court has correctly declined "to parse and isolate every alleged misrepresentation" but rather has "considered [them] in the context of the alleged deceptive scheme as a whole." ECF 1214, at 37; *see also id.* at 37 n.36 (recognizing that affirmative misrepresentations are only part of the AGs' deception claims). Further, misrepresentations need not be false; a defendant's conduct merely must have a tendency or likelihood to deceive.

Even on its own terms, Meta's anticipated motion is baseless. The AGs have identified numerous statements related to **addiction** beyond the two Meta cites, including a Meta executive stating that she "disagree[s] with calling our product addictive."[1] Meta's own internal files show that its platforms are addictive, including company-commissioned research finding that teens have an "addicts' narrative" about their platform use, AG Complaint, ¶ 576, and an internal report concluding that Facebook "exploits weaknesses in the human psychology to promote product engagement and time spent," META3047MDL-044-00026817. This information was accessible or even sent to executives authoring the misrepresentations at issue, providing evidence of knowledge. Regarding **safety and wellbeing,** Meta ignores all but two misrepresentations identified in the complaint and through discovery.[2] And there clearly is a dispute of material fact regarding whether Meta's platforms impact youth safety and wellbeing, whether Meta prioritized efforts in that area, and the prevalence of harmful experiences on Meta's platforms. Expert testimony, testimony from current and former employees, and significant documentary evidence support the AGs' position on these issues. Finally, Meta again omits statements disavowing the prioritization of **time spent** on the platforms.[3] It is also wrong about their falsity: for example,

[1] Protecting Kids Online: Facebook, Instagram, and Mental Health Harm: Hearing Before Subcomm. on Consumer Prot., Prod. Safety, & Data Sec. of the S. Comm. on Com., Sci., & Transp., 117th Cong. 1, 38 (2021).

[2] Other examples include: "[Well-being is] our number one priority" (Instagram seriously considering potentially massive change for platform, CBS This Morning, June 26, 2019, https://www.cbsnews.com/news/adam-mosseri-instagram-is-seriously-considering-hiding-likes-apps-head-reveals/), and "Overall, the research that we have seen is that using social apps to connect with other people can have positive mental health benefits and well-being benefits" (Disinformation Nation: Social Media's Role in Promoting Extremism and Misinformation: Hearing Before Comm. on Commc'ns & Tech., 117th Cong. 1, 56 (2021)).

[3] One executive responded to the question: "But isn't part of your business model to have more eye-balls for a longer amount of time engaged using your services?" with "[t]hat is not actually how we build our products." Protecting Kids Online: Facebook, Instagram, and Mental Health

internal documents reveal that as late as 2022, a Meta "top-level goal metric" was "sessions," and that "time spent" was a "North Star." META3047MDL-050-00267998.

Meta repeats five defenses rejected at the motion-to-dismiss stage. *See* ECF 1214. First, Meta argues that the AGs rely on inactionable puffery, but context is key, and Meta's statements downplaying the safety risks of its platforms must be viewed in light of evidence showing Meta was well aware of those risks. *See Williams v. Gerber*, 552 F.3d 934, 939 n.3 (9th Cir. 2008). Second, Meta argues that statements of opinion are protected by the First Amendment, but the First Amendment does not shield deceptive commercial speech, *see Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557, 563 (1980), and the qualifier, "I don't believe," does not change that Meta deliberately concealed research showing its platforms' addictiveness. Third, Meta argues that its deceptive statements were neither directed to consumers nor connected to commercial transactions, but state laws define commercial transactions broadly and this Court has already rejected Meta's narrow reading. ECF 1214, at 62–73. If Meta moves on this basis, the AGs will cross-move to confirm that these elements have been satisfied. Fourth, Meta argues again that congressional statements are inactionable under the *Noerr-Pennington* doctrine, but offers "no evidence that [it] was seeking any redress from Congress that implicates its First Amendment right to petition," *Id.* at 45, rather than making the statements as part of a broader publicity campaign. Finally, Meta argues that it had no duty to release certain information regarding harms, but the AGs have adduced evidence of a scheme of statements and omissions that together misled the public as to the safety of Meta's platforms. As part of this scheme, Meta published and promoted one type of metric about the prevalence of harmful experiences while suppressing an internal survey presenting a conflicting view. To understand Meta's deceptive scheme, and its materiality, Meta's misleading statements must be viewed in context, alongside information it omitted, as this Court recognized. *Id.* at 37. The AGs' deception claims do not impose a duty to disclose or compel speech; rather, they seek to hold Meta liable for its misleading—and thus unprotected—commercial speech.

Unfairness Claims. Meta's arguments for summary judgment on unfairness claims also fail. First, Meta relitigates Section 230 and argues that the First Amendment bars these claims. But the Ninth Circuit has rejected such a "broad[] rule that would effectively bar 'all claims' 'stemming from … publication of information created by third parties,'" as Meta seeks here. *Calise v. Meta Platforms, Inc.*, 103 F.4th 732, 742 (9th Cir. 2024) (citation omitted). Regarding the First Amendment, the AGs' claims target Meta's conduct as a platform designer, not Meta's expression, and they are thus not subject to strict scrutiny. *Moody v. NetChoice, LLC* is inapposite because it addressed the different question of whether social media platforms were speaking when moderating the content of their users' speech. 603 U.S. 707, 728 (2024). If the Court deems Meta's design features speech and not conduct, the AGs' claims target the time, place, and manner of such features, not their content. Such content-neutral regulation is still not subject to strict scrutiny.

Second, Meta's position that the AGs "have no evidence" that time restriction tools, the multiple account function, and appearance-altering features are actionable is belied by the evidentiary record. For **appearance altering filters**, experts engaged by Meta "recommended

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Harm: Hearing Before Subcomm. on Consumer Prot., Prod. Safety, & Data Sec. of the S. Comm. on Com., Sci., & Transp., 117th Cong. 1, 39 (2021).

prohibiting these filters, citing known impact of media imagery that idealizes unrealistic beauty standards on peoples' body image and mental health." META3047MDL-019-00101105. Irrespective of published content, beauty filters "proactively encourag[e] you to manipulate your own image and imply[] that . . . you don't look okay the way you are." Stewart Dep. 73:17–74:1. Users adopt Meta's **time restriction tools** at negligible rates, such as 0.165% for the Take a Break tool. META3047MDL-047-01170167. Teens can use **multiple accounts**, including "Finstas," to avoid parents, potentially engage in risky behavior, and as a tool to maintain the curated image presented on their primary accounts while spending time on Meta's platforms on other accounts. *See* META3047MDL-031-00086272; Davis Dep. 585:3–21. Experts corroborate these positions.

Third, Meta misconstrues consumer protection law and ignores abundant evidence demonstrating Meta's superior bargaining power, unconscionable one-sidedness, and departures from good faith in operating its platforms for years, despite known risks and harms. This conduct is egregious when comparing the sophistication and resources of Meta to those of minors. Meta's conduct offends statutes and public policies aimed at protecting minors' privacy and safety online, including COPPA and state laws regarding social media. State consumer protection laws are not unconstitutionally vague, either. *See Roberts v. U.S. Jaycees*, 468 U.S. 609, 629 (1984).

Additional Limitations to Consumer Protection Claims. Meta namedrops assorted legal doctrines that purportedly limit the AGs' recovery but provides no further explanation. If Meta moves on these grounds, the AGs will cross-move to confirm their inapplicability to this case.

COPPA. Meta again ignores the record and misrepresents law. It falsely claims that there is no evidence establishing its actual knowledge of children on its platforms. But as the AGs have explained, Meta admitted in 30(b)(6) testimony to using children's data to train its AI models *after* determining they were underage. ECF 2465, at 1-2. The AGs do not rely solely on experts; the record is replete with documents establishing Meta's actual knowledge, dozens of which the AGs identified in interrogatory responses. Contrary to Meta's assertion, *Stephens v. Union Pacific Railroad Co.*, only holds that an expert opinion "cannot create a genuine issue of material fact if it rests on assumptions that are not supported by the evidence." 935 F.3d 852, 856 (9th Cir. 2019). Here, the AGs' expert analysis rests on "factual evidence"—testimony, documents, and data from Meta, showing, for example, that Meta recently allowed tens of thousands of accounts that its models predicted belonged to children to remain on its platforms. McDaniel Report ¶¶ 271-89.

The record also establishes disputes of material fact regarding whether Meta's platforms are directed to children. For instance, an AG expert opines that Meta's platforms are child directed, citing numerous internal documents. This same evidence creates an issue of fact as part of the "totality of the circumstances" analysis for determining whether Meta's platforms target children as their primary audience. *See* Children's Online Privacy Protection Rule, 78 Fed. Reg. 3972, 3984 (Jan. 17, 2013). Moreover, the sufficiency of Meta's age-gating is far from "undisputed." For instance, deposition testimony establishes that Instagram did not age-gate all logged-in users until May 2022. Hartnett Dep. 38:23-42:14. Meta misrepresents the law regarding the broad range of remedies available to the AGs, which encompasses disgorgement, *see* 15 U.S.C § 6504(a)(1), and it offers no basis for its statute of limitation defense to COPPA. Finally, the State AGs' deception and unfairness claims do not fail even if the COPPA claims fail, because those other claims are

also based on Meta's broader failure to protect under-13's privacy and safety and its deceptive acts regarding its under-13 policies and practices—irrespective of Meta's COPPA compliance.

Subsidiary Liability. Meta's claim that its subsidiaries are "not responsible for the platform's development and operation" is contradicted by evidence such as deposition testimony regarding employment at the subsidiaries, Newton Dep. 28:11-19, and documentary evidence that the subsidiaries were involved in wellbeing research. META3047MDL-014-00256148.

II. Meta's Rule 702 Motions

Dr. Adam Alter. Dr. Alter—a marketing professor at NYU with a Ph.D in social and cognitive psychology and a decade of industry experience—is qualified to render his opinions, and Meta's disagreements with his conclusions are issues for trial. First, Dr. Alter has not "assumed the ultimate issue." Rather, he applied a consumer psychology-based framework to examine the contrast between Meta's internal documents discussing the health and safety effects of Meta's platforms and consumers' likely understandings, which will aid jurors in determining whether any individual statement was misleading. *See In re Tylenol Acetaminophen Mktg., Sales Pracs. & Prods. Liab. Litig.*, 2016 WL 807377, at *6 (E.D. Pa. Mar. 2, 2016) (permitting marketing expert to compare consumer understanding to facts). Second, Dr. Alter's opinion that consumers were exposed to Meta's statements is based on: 1) his experience studying and interacting with the public about social media concerns; 2) the academic literature on consumer engagement; and 3) empirical evidence of how Meta's public statements were disseminated. Third, Dr. Alter's COPPA approach aligns with the applicable legal standard for assessing whether a service is "directed to children," and accurately recognizes that "mixed audience" websites are subject to COPPA. *See* 16 C.F.R. § 312.2. Finally, Dr. Alter has the requisite expertise and industry experience to opine on Meta's marketing goals and internal knowledge. *See*, *e.g.*, *United Food & Commer. Workers Local 1776 v. Teikoku Pharma USA*, 296 F. Supp. 3d 1142, 1194 (N.D. Cal. 2017) (expert's background in relevant industry qualified him to opine on defendant's considerations in launching products, which is different than motivation or state of mind testimony). Regardless, these concerns are "better ruled on at trial," as context and purpose are "critical" to assessing this type of testimony. *See In re Juul Labs, Inc. Mktg. Sales Pracs. & Prods. Liab. Litig.*, 2022 WL 1814440, at *14, *16 (N.D. Cal. June 2, 2022).

Dr. Ravi Iyer. Dr. Iyer is qualified to render opinions about safety tools and measures Meta could implement to address teens' unwanted, harmful, and negative experiences on Meta's platforms and the inadequacies of Meta's current safety tools. He previously worked at Facebook mitigating negative externalities of Facebook's products. Dr. Iyer's proposed design changes include some that Meta previously implemented in limited circumstances and could expand, and he explains how Meta could measure the efficacy of his proposals. Meta's challenges to the substance of Dr. Iyer's opinions are better suited for cross-examination or responsive expert opinions, not exclusion. *See, e.g., Elosu v. Middlefork Ranch Inc.,* 26 F.4th 1017, 1024 (9th Cir. 2022).

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ATTESTATION

I, Verna Pradaxay, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

DATED: December 1, 2025

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